

AGREEMENT FOR ENGINEERING SERVICES  
AMENDMENT #2

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THIS AGREEMENT made and entered by and between the CITY of Placerville, a political subdivision of the State of California (hereinafter referred to as "CITY") and Drake Haglan and Associates, a company duly qualified to conduct business in the State of California, whose principal place of business is 11060 White Rock Road, Suite 200, Rancho Cordova, CA 95670, (hereinafter referred to as "CONSULTANT");

**WITNESSETH**

**WHEREAS**, CITY has determined that it is necessary to obtain a CONSULTANT to provide engineering service for engineering design services and bid document preparation for the Clay Street Realignment and Bridge Replacement Project (CIP #40617).

**WHEREAS**, CONSULTANT has represented to CITY that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and CITY has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws.

**NOW, THEREFORE**, CITY and CONSULTANT mutually agree as follows:

**ARTICLE I – SCOPE OF SERVICES**

CONSULTANT agrees to provide engineering design services to CITY as described in Exhibit 'A' incorporated herein and made by reference a part hereof.

**ARTICLE II – COMPENSATION FOR SERVICES**

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal (Exhibit B). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. The rates are not adjustable for the performance periods set forth in this Contract.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are listed in the cost proposal (Exhibit B).
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in cost proposal (Exhibit B).
- D. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, the CITY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article XXXIX Termination.
- E. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- F. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the CITY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable.

Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due the CITY including any equipment purchased under the provisions of Article XXIX Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to the CITY'S Contract Administrator at the following address:

CITY of Placerville  
Attn: Rebecca Neves  
3101 Center St.  
Placerville, CA 95667

- G. The total amount payable by the CITY shall not exceed \$764,068.**
- H. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by the CITY'S Contract Administrator.
- I. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- J. All subcontracts in excess of \$25,000 shall contain the above provisions.
- K. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- L. The CITY shall hold 5% retainage from the prime CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the CITY, of the contract work, and pay retainage to the prime CONSULTANT based on these acceptances. The prime CONSULTANT, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the prime CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime CONSULTANT and subconsultants.

### **ARTICLE III – CHANGES TO AGREEMENT**

- A. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.
- B. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, Exhibit 'B,' without prior written approval by the CITY'S Contract Administrator.

### **ARTICLE IV – CONSULTANT TO CITY**

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from CITY and its staff. It is further agreed that in all matters pertaining to this Agreement, CONSULTANT shall act as CONSULTANT only to the CITY and shall not act as CONSULTANT to any other individual or entity affected by this Agreement nor provide information in any manner to any

party outside of this Agreement that would conflict with CONSULTANT's responsibilities to the CITY during term hereof.

#### **ARTICLE V – SUBCONTRACTING**

CONSULTANT is engaged by CITY for its unique qualifications and skills as well as those of its personnel.

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between the CITY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to the CITY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from the CITY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the CITY'S Contract Administrator, except that, which is expressly identified in the approved Cost Proposal, Exhibit 'B'.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by the CITY.
- D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants
- E. Any substitution of subconsultant(s) must be approved in writing by the CITY'S Contract Administrator prior to the start of work by the subconsultant(s).

#### **ARTICLE VI – INDEPENDENT CONSULTANT/LIABILITY**

CONSULTANT is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement.

CONSULTANT exclusively assumes responsibility for acts of its employees, associates and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONSULTANT shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. CITY shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONSULTANT or its employees.

#### **ARTICLE VII – PREVAILING WAGE**

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

## **ARTICLE VIII – RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and CITY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, CITY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

## **ARTICLE IX – AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the CITY'S Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by the CITY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSUL

TANT and approved by the CITY'S contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by the CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

## **ARTICLE X – DEFAULT, TERMINATION AND CANCELLATION**

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice.
  - 1. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.
  - 2. Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this

Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. Bankruptcy: This Agreement, at the option of the CITY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- C. Ceasing Performance: CITY may terminate this Agreement in the event CONSULTANT ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: CITY may terminate this Agreement in whole or in part seven (30) calendar days upon written notice by CITY for any reason. If such prior termination is effected, CITY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONSULTANT, and for such other services, which CITY may agree to in writing as necessary for contract resolution. In no event, however, shall CITY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONSULTANT shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, CITY reserves the right to take over and complete the work by contract or by any other means.

## **ARTICLE XI – NOTICE TO PARTIES**

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to CITY shall be in duplicate and addressed as follows:

CITY OF PLACERVILLE  
DEVELOPMENT SERVICES DEPARTMENT  
3101 CENTER STREET  
PLACERVILLE, CA 95667  
ATTN: Rebecca Neves, City Engineer

Or to such other location as the CITY directs.

Notices to CONSULTANT shall be addressed as follows:

DRAKE HAGLEN AND ASSOCIATES  
11060 WHITE ROCK ROAD, SUITE 200  
RANCHO CORDOVA, CA 95670  
ATTN: Dennis Haglan, Project Manager

Or to such other location as the CONSULTANT directs.

## **ARTICLE XII – INDEMNITY**

The CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CLIENT, its officers, directors and employees (collectively, CLIENT) against all damages, liabilities and costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CONSULTANT'S negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the CONSULTANT is legally liable.

The CITY agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities and costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CITY'S negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the CITY is legally liable



Neither the CITY nor the CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

### **ARTICLE XIII – INSURANCE**

CONSULTANT shall provide proof of a policy of insurance satisfactory to the CITY and documentation evidencing that CONSULTANT maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of CONSULTANT as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the CONSULTANT in the performance of the Agreement.
- D. Professional Liability Insurance (errors and omissions) of not less than \$1,000,000.00 per claim and in the aggregate. Further, CONSULTANT agrees to maintain in full force and effect such insurance for three years after performance of work under this Agreement is completed.
- E. CONSULTANT shall furnish a certificate of insurance satisfactory to the CITY as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to CITY, or be provided through partial or total self-insurance likewise acceptable to CITY.
- G. CONSULTANT agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONSULTANT agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of CITY and CONSULTANT agrees that no work or services shall be performed prior to the giving of such approval. In the event the CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, CITY may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to CITY, and;
  - 2. The CITY of Placerville, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees or volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the CITY of Placerville, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. CONSULTANT's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event CONSULTANT cannot provide an occurrence policy, CONSULTANT shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

Certificate of insurance shall meet such additional standards as may be determined by the CITY as essential for protection of the CITY

#### **ARTICLE XIV – CONFLICT OF INTEREST**

No official or employee of CITY who exercises any functions or responsibilities in review or approval of services to be provided by CONSULTANT under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of CITY have any interest, direct or indirect, in this Agreement or the proceeds thereof.

- A. CONSULTANT shall disclose any financial, business, or other relationship with the CITY that may have an impact upon the outcome of this contract, or any ensuing the CITY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing the CITY construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- D. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

#### **ARTICLE XV – INTEREST OF CONSULTANT**

CONSULTANT covenants that CONSULTANT presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. CONSULTANT further covenants that in the performance of this Agreement no person having any such interest shall be employed by CONSULTANT.

#### **ARTICLE XVI - REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any CITY employee. For breach or violation of this warranty, the CITY shall have the right in its discretion; to terminate the contract without liability; to

pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

## **ARTICLE XVII – CALIFORNIA RESIDENCY**

All independent CONSULTANTS providing services to the CITY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The CONSULTANT will be required to submit a Form 590 prior to execution of an Agreement or the CITY shall withhold seven (7%) percent of each payment made to the CONSULTANT during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

## **ARTICLE XVIII – TAXPAYER IDENTIFICATION NUMBER**

All independent CONSULTANTS or Corporations providing services to the CITY must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

## **ARTICLE XIX – CITY BUSINESS LICENSE**

To conduct business within the CITY of Placerville CONSULTANT must be in possession of a valid CITY Business License.

## **ARTICLE XX - ADMINISTRATOR**

The CITY Officer or employee with responsibility for administering this Agreement is the CITY Engineer, or successor.

## **ARTICLE XXI – AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

## **ARTICLE XXII – PARTIAL INVALIDITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

## **ARTICLE XXIII - DISPUTES**

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the CITY'S Contract Administrator, CITY Engineer and Development Services Department Director, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by the CITY Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. CONSULTANT waives any removal rights it might have under Code of Civil Procedure Section 394.



Either party may demand mediation by serving a written notice stating the essential nature of the dispute and the amount of time or money claimed, and requiring that the mediation take place within sixty (60) days of service of notice. The mediation shall be administered by the American Arbitration Association or by such other person or organization as the parties may agree upon in writing. After notice, both parties shall participate in good faith in the mediation of all disputes and no action or suit may commence unless the mediation does not occur within ninety (90) days after service of notice, or the mediation has occurred but did not resolve the dispute, or a statute of limitation would elapse if suit was not filed prior to sixty (60) days after service of notice.

#### **ARTICLE XXIV – AGREEMENT DEFINITION**

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

#### **ARTICLE XXV – EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the performance of this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

#### **ARTICLE XXVI – DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

- A. To the extent that Federal funds are used, it is the policy of the U.S. Department of Transportation (DOT) that minority and women-owned business enterprises (hereby referred to as DBEs), as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement.
- B. To the extent applicable, CONSULTANT agrees to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.
- C. The goal for DBE participation for this contract is 7%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in the CONSULTANT Proposal DBE Commitment (Exhibit 10-O1), or in the CONSULTANT Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of the contract or such other remedy as the CITY deems appropriate.
- D. Upon completion of the Contract, a summary of records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- E. Any changes to a subconsultant's certification during the life of the Contract should be reported to the CITY'S Contract Administrator within 30 days of the change.

- F. A DBE firm may be terminated only with prior approval from the CITY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting the CITY'S consent for the termination, the CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- G. All subcontracts awarded by CONSULTANT shall contain the provisions included of this section.

## **ARTICLE XXVII – STATEMENT OF COMPLIANCE**

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, CONSULTANT and its subCONSULTANTS shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- C. The CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. The CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

## **ARTICLE XXVIII – PROHIBITION OF EXPENDING CITY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
  - a. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal

loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

#### **ARTICLE XXIX – EQUIPMENT PURCHASE**

- A. Prior authorization in writing, by the CITY'S Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by the CITY'S Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the CITY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit the CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established the CITY procedures; and credit the CITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the CITY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

#### **ARTICLE XXX – COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to the CITY.

#### **ARTICLE XXXI – DEBARMENT AND SUSPENSION CERTIFICATION**

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the CITY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

#### **ARTICLE XXXII - FUNDING**

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only, if sufficient funds are made available to the CITY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or the CITY'S governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

#### **ARTICLE XXXIII - INSPECTION OF WORK**

CONSULTANT and any subconsultant shall permit the CITY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

#### **ARTICLE XXXIV - OWNERSHIP OF DATA**

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the CITY; and no further agreement will be necessary to transfer ownership to the CITY. CONSULTANT shall furnish the CITY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.



- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the CITY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by the CITY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. The CITY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

#### **ARTICLE XXXV - CLAIMS FILED BY THE CITY'S CONSTRUCTION CONTRACT**

- A. If claims are filed by the CITY'S construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with the CITY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that the CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- C. Services of CONSULTANT's personnel in connection with the CITY'S construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

#### **ARTICLE XXXVI - CONFIDENTIALITY OF DATA**

- A. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the CITY'S actions on the same, except to the CITY'S staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- B. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the CITY, and receipt of the CITY'S written permission.
- C. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
- D. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than the CITY. All financials, statistical, personal, technical, or other data and information relative to CITY's operations, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- E. Permission to disclose information on one occasion, or public hearing held by CITY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.



## ARTICLE XXXVII - PERFORMANCE PERIOD

- A. This contract shall go into effect on 1/1/2017 contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The contract shall end on 1/1/2020, unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on CITY until the contract is fully executed and approved by CITY.
- C. The period of performance for this agreement shall be in accordance with the current project schedule for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract shall be extended by contract amendment.
- D. This Agreement may be extended if mutually agreed by both parties hereto, in writing not less than thirty (30) days prior to the expiration of this Agreement.

## ARTICLE XXXVIII - ALLOWABLE COSTS AND PAYMENTS

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- E. Progress payments will be made monthly in arrears based on services provided and actual costs incurred.
- F. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY, and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.
- G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XXIX Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

CITY OF PLACERVILLE  
DEVELOPMENT SERVICES DEPARTMENT  
3101 CENTER STREET  
PLACERVILLE, CA 95667  
ATTN: Rebecca Neves, City Engineer

- H. If the CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in this agreement, no payment will be made until the deliverable has been satisfactorily completed.

- I. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this contract shall not exceed \$ 764,068. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

#### ARTICLE XXXIX - TERMINATION

- A. LOCAL AGENCY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.
- C. The maximum amount for which the LOCAL AGENCY shall be liable if this contract is terminated is \$764,068 dollars.

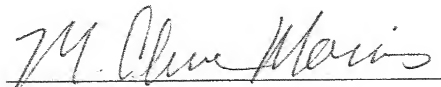
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- CITY OF PLACERVILLE --

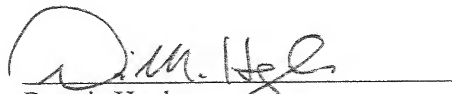
-- CONSULTANT --

Date: 1-26-2018

Date: 1/23/18



M. Cleve Morris  
City Manager  
City of Placerville



Dennis Haglan  
President/Project Manager  
Drake Haglan and Associates